IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2096 OF 2007
IN
SUIT NO.2555 OF 2003

H.D.F.C.Ltd. ..Plaintiff.

V/s.

Jayesh C. Doshi & Ors. ..Defendants.

Mr.Sanjay Udeshi for plaintiff.

Mr.Shashi Jain a/w U.Jain i/b. Naina de for defendant Nos. 1 and 2.

Ms.Mehrunnisa Sura i/b. Yusuf & Associates for defendant Nos. 3,4 and 5.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 22, 2007.

P.C. :

1. Heard counsel for the parties.

2. In fact, the leading Notice of Motion is taken out by the plaintiffs. Counsel for the defendant Nos. 1 and 2 submits that before passing any order on the said Notice of Motion No.1215 of 2007, it will be necessary to pass order on the present Motion. Counsel for the plaintiff however, submits that if the leading Notice of Motion No.1215 of 2007 was to succeed, nothing will survive in the present Motion. Nevertheless, I herein proceed to pass order in the

present Motion in the first instance.

3. This Motion is not contested by the plaintiff. According to the plaintiff, it makes no difference whether the defendant No.3 remains agent of the Court Receiver, so long as the Court Receiver is continued in respect of the suit property during the pendency of the suit.

4. This Motion is however, resisted by the defendant No.3. In the first place, it is submitted that advocate on record for defendant Nos. 1 to 5 being common, it will be inappropriate for them to continue in the present Notice of Motion. It is intriguing that the request on behalf of the advocate on record for recusing to appear is restricted to the present Motion. If the advocate on record feels embarrassed to appear for defendant No.3 in this Motion, for the same reason, ought not to continue to appear in the main proceeding. However, the stand taken by the advocate for the defendant No.3 is that they will appear for defendant Nos. 1 to 5 in the main proceeding, but not for defendant No.3 in the present Motion. The request for adjournment on this count is incomprehensible. So long as the Advocate is not discharged, is bound to represent his client.

Obviously, this controversy is raised only to protract the matter. I see no propriety in adjourning the matter.

5. Significantly, the relief which is claimed in the present Motion, is limited to deleting the name of defendant No.3 as agent of the Court Receiver in respect of the suit flat. This prayer is founded on the Registered document, which is at Exh.'C' at page-16. The said document indicates that it is only the defendant Nos. 1 and 2, who became owners in respect of the suit flat under the said conveyance. Counsel for the defendant No.3 would however, contend that defendant No.3 has also contributed towards consideration for purchase of the suit flat. There is no material to support this plea, available on record.

6. In any case, as presently advised, this Court will have to accept the claim of the defendant Nos. 1 and 2, which is founded on the basis of a registered agreement. Assuming that the defendant No.3 was to place on affidavit that he has also contributed towards consideration amount, that will be only his bare words, not corroborated by the registered document. The Court will prefer to rely on the registered document till the authenticity and validity

thereof has been put in issue before appropriate forum.

7. Accordingly, I see no reason to decline the request of defendant Nos. 1 and 2 to delete the name of defendant No.3 as agent of the Court Receiver in respect of the suit flat. The fact remains that defendant Nos. 1 and 2 will continue to remain as agent of the Court Receiver. The defendant No.3 even if succeeds at a later point of time in establishing its claim, the possession of the suit flat by the concerned parties will only be as agent of the Court Receiver. Thus understood, it will make no difference or cause any prejudice to the defendant No.3 in any manner.

8. Accordingly, this Motion is made absolute in terms of prayer clause (b) and (c), which read thus:

> "(b) that ad-interim order dated 29th November, 2003 and final order dated 30th September, 2005 passed by this Hon'ble Court in Notice of Motion No.2708 of 2003 in the above suit be modified and corrected by deleting the name of Defendant No.3 as an agent of Court Receiver, High Court, Bombay with all other consequential modifications/ corrections;
>
> (c) that the Court Receiver, High Court, Bombay be directed to delete the name of Defendant No.3 as his agent for the suit flat in the above suit and other proceedings before

the Court Receiver;"

9. Ordered accordingly.